

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ROCKY W. MITCHELL,)
)
Plaintiff,)
)
v.) Case No. CIV-21-265-SLP
)
)
STEPHENS COUNTY, et al.,)
)
Defendants.)

O R D E R

Before the Court is the Report and Recommendation of United States Magistrate Judge Shon T. Erwin entered June 24, 2021 [Doc. No. 11]. No objection to the Report and Recommendation has been filed nor has an extension of time in which to object been sought or granted. Therefore, the Report and Recommendation of the Magistrate Judge is ADOPTED as follows:

- Plaintiff's claims against Stephens County for malicious prosecution and excessive bond are dismissed without prejudice for failure to state a claim upon which relief may be granted.
- Plaintiff's individual capacity claims against Herberger and Graham for malicious prosecution and excessive bond are dismissed with prejudice on grounds of judicial immunity. Plaintiff's official capacity claims against Herberger and Graham are dismissed without prejudice pursuant to Eleventh Amendment immunity.
- Plaintiff's individual capacity claims against Hicks and Lewis for malicious prosecution are dismissed with prejudice on grounds of prosecutorial immunity.

#

Plaintiff's individual capacity claims against Hicks and Lewis for excessive bond are dismissed without prejudice for failure to state a claim upon which relief can be granted. Plaintiff's official capacity claims against Hicks and Lewis are dismissed without prejudice pursuant to Eleventh Amendment immunity.

- Plaintiff's claim for malicious prosecution against Eades is not dismissed.

This matter remains referred to United States Magistrate Judge Shon T. Erwin for further proceedings consistent with the Order of Referral entered March 29, 2021 [Doc. No. 5].

IT IS SO ORDERED this 31st day of August, 2021.


SCOTT L. PALK
UNITED STATES DISTRICT JUDGE